

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY A. DEARING and U.S. POSTAL SERVICE,
POST OFFICE, Bedford Park, Ill.

*Docket No. 97-596; Submitted on the Record;
Issued October 23, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate the employee's compensation effective May 30, 1996 on the grounds that the employee's disability due to a September 19, 1991 employment injury had ceased by that date; and (2) whether the Office properly terminated the employee's authorization for medical treatment on May 30, 1996.

On November 15, 1995 appellant, then a 57-year-old FTM handler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her lower back, hurt her hip, neck and right shoulder when the chair she sat down in toppled over and knocked her to the floor. The Office accepted her claim for contusion of back and right shoulder and mild cervical strain.

Appellant was initially treated by Dr. T. Ramos who diagnosed a mild cervical strain and buttock contusion. Dr. Ramos opined that appellant "should be able to return to her regular sedentary position as of November 17, 1995. No current disability is expected from this injury."

In a report dated November 18, 1995, Dr. David J. Smith, an attending Board-certified orthopedic surgeon, noted that appellant stated she fell off her chair at work. Dr. Smith diagnosed "loss of intervertebral space at L5-S1, slight spondylolisthesis at L4-5. There is marked facet hypertrophy and large calcific mass in the pelvis."

In a note dated December 6, 1995, Dr. Smith diagnosed degenerative disc disease at L4-5 on the right side based on her bone scan.

In duty status reports (Forms CA-17) dated December 6, 1995, January 3 and February 8, 1996, Dr. Smith diagnosed low back pain and that appellant was unable to return to work.

In an attending physician's report (Form CA-20) dated December 7, 1995, Dr. Smith diagnosed lumbar disc disorder L4-5 and that appellant would be able to return to work in

February 1996. Dr. Smith checked “yes” that this condition had been caused or aggravated by appellant’s November 15, 1995 employment injury.

In a Form CA-20 dated December 19, 1995, Dr. Smith diagnosed degenerative joint disease by bone scan and degenerative facet level L4-5. He indicated that appellant was still disabled for work.

In Forms CA-20 dated January 3 and April 4, 1996, Dr. Smith diagnosed severe back spasms and lumbar disc disease L4-5. Dr. Smith checked “yes” that appellant would be disabled for her regular work for 90 days or longer.

In a note dated February 5, 1996, Dr. Smith opined that appellant was still disabled due to her November 15, 1995 employment injury.

By letter dated February 24, 1996, the employing establishment directed appellant to report to Dr. Leonard Smith, a Board-certified orthopedic surgeon, for a fitness-for-duty examination. In a report dated March 8, 1996, Dr. Smith opined that appellant was capable of performing her usual job based upon the objective evidence. Dr. Smith noted that appellant had “degenerative disc disease at L5-S1 of long-standing along with a pseudospondylolisthesis at L4-5 secondary to degenerative changes of the facet joints at L4-5. This condition is noncausally related to the work injury of November 15, 1996.”

By letter dated May 10, 1996, the Office referred appellant to Dr. Charles W. Mercier, a Board-certified orthopedic surgeon, along with a statement of accepted facts and medical record for a second opinion.

In a letter dated May 22, 1996, Dr. David Smith noted Dr. Ramos’ opined that appellant was able to work based upon his November 1995 examination. Dr. Smith opined that due to appellant’s complaints of pain that she is unable to return to her employment.

In a report dated May 30, 1996, Dr. Mercier, based upon a history of the injury, medical records, objective evidence and physical examination, diagnosed cervical strain -- mild and multiple contusions by history. Dr. Mercier opined that based upon the objective evidence there is no permanent disability due to her accepted employment injury. Dr. Mercier also opined that appellant did not require any further medical treatment due to her employment injury.

By decision dated August 7, 1996, the Office terminated appellant’s compensation for wage-loss and medical benefits effective May 30, 1996 as the evidence established that she no longer was disabled or had residuals due to her accepted employment injury. The Office based its decision on the opinion of Dr. Mercier, who found in his May 30, 1996 report that the employee had no permanent disability from her November 15, 1995 employment injury. The Office found that the reports of Dr. David Smith were unsupported by the objective evidence or explain how appellant’s disability is causally related to her accepted employment injury.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

The weight of the medical evidence of record, as represented by the opinion of Dr. Mercier, the second opinion specialist and Board-certified, supports that the employee has no disability due to the accepted employment injury of trauma to lower back and right shoulder and mild cervical strain. In a report dated May 30, 1996, Dr. Mercier found that there was no objective evidence which supported that appellant had any remaining disability due to her November 15, 1995 employment injury.

The Board finds that Dr. Mercier's conclusion is rationalized and is based on an accurate factual and medical background following diagnostic testing. There is no rationalized medical opinion from the employee's attending physician supporting a continuing medical condition that is causally related to the November 15, 1995 employment injury. Dr. David Smith concluded, without explanation, that the employee's disability was due to her November 15, 1995 employment injury. Dr. David Smith provided no explanation or rationale in support of his conclusion that the employee's disability was due to her employment injury.⁵ The remainder of Dr. David Smith's reports consist of form reports in which he checked, without explanation, that the employee is disabled due to her lumbar disc disorder. As these reports are devoid of findings on examination and a rationalized medical opinion explaining how the injury caused the employee's disability, they are insufficient to support a finding that the employee had any disability due to the accepted employment injury after May 30, 1996.⁶

The Board further finds that the Office properly terminated the employee's authorization for medical treatment on May 30, 1996.

The Office, to terminate authorization for medical treatment, has the burden of establishing that the employee no longer has residuals of the employment-related condition that requires further medical treatment.⁷ The Office met this burden through the report of

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

⁵ *Arlonia B. Taylor*, 44 ECAB 591 (1993).

⁶ *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁷ *Furman G. Peake*, *supra* note 3.

Dr. Mercier, who concluded that the employee no longer had any residuals requiring further medical treatment related to her accepted November 15, 1995 employment injury, and provided rationale in support of that conclusion.

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 7, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 23, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member